

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Second Application by BellSouth)
Corporation, BellSouth Telecommunications,)
Inc., and BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA Services)
in Louisiana)

CC Docket No. 98-121

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APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELL SOUTH'S SECOND
SECTION 271 APPLICATION FOR LOUISIANA

VOLUME IX

Filed August 4, 1998

**APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELL SOUTH'S SECOND
SECTION 271 APPLICATION FOR LOUISIANA**

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TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
A	Michelle Augier	AT&T Market Entry	§ 271(c)(1)(A), (c)(2)(B), (d)(3)
B	*William J. Baumol	Public Interest	§ 271(d)(3)(C)
C	*Robert H. Bork	Public Interest	§ 271(d)(3)(C)
D	Jay M. Bradbury	Operations Support Systems, Directory Listing, Number Portability, Resale	§ 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv)
E	Robert V. Falcone	Unbundled Network Elements: Combinations	§ 271(c)(2)(B)(i), (ii), (v) and (vi)
F	Gregory R. Follensbee	Unbundled Network Elements: Pricing	§ 271(c)(2)(B)(i), (ii)
G	John M. Hamman	Unbundled Switching, Intellectual Property, Reciprocal Compensation	§ 271(c)(2)(B)(ii), (vi) and (xiii)
H	Donna Hassebrock	ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability	§ 271(c)(2)(B)(i), (ii), (viii) and (xi)
I	R. Glenn Hubbard and William H. Lehr	Public Interest	§ 271(d)(3)(C)
J	Patricia A. McFarland	Section 272 Compliance	§ 271(d)(3)(B)
K	Philip I. Miller and Dean A. Gropper	Public Interest - ILEC Ability to Harm Competition	§ 271(d)(3)(C)
L	Sharon Norris	Louisiana Public Service Commission Proceedings on Operations Support Systems	§ 271(c)(2)(B)(ii)

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
M	C. Michael Pfau and Katherine M. Dailey	Performance Measurements	§ 271(c)(2)(B)(i), (ii) and (xiv)
N	Jordan Roderick	PCS	§ 271(c)(1)(A), (d)(3)

* Affidavits marked with this are as originally filed in CC Docket No. 97-231

MISCELLANEOUS APPENDIX

TAB	DESCRIPTION
O	Order, <u>AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.</u> , No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998)
P	Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998)

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In the Matter of

**Second Application by BellSouth
Corporation, BellSouth Telecommunications,
Inc., and BellSouth Long Distance, Inc., for
Provision of In-Region, InterLATA Services
in Louisiana**

CC Docket No. 98-121

AFFIDAVIT

OF

**PHILIP I. MILLER
and
DEAN A. GROPPER**

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT K

Filed August 4, 1998

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Second Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc. and)	CC Docket No. 98-121
BellSouth Long Distance, Inc. for Provision)	
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AFFIDAVIT OF
PHILIP I. MILLER AND DEAN A GROPPER
ON BEHALF OF
AT&T CORP.

I. INTRODUCTION AND QUALIFICATIONS

A. Philip I. Miller

1. My name is Philip I. Miller. My business address is 1 Oak Way, Berkeley Heights, N.J. 07922.

2. My current position at AT&T is Division Manager, Business Development, in the Network and Computing Services Division of AT&T. I have held this position since March, 1995. In this position I am responsible for developing the business relationship (negotiation, contracts, implementation, and performance) with Competitive Local Exchange Carriers (CLECs) on behalf of AT&T throughout the U.S. Prior to taking my current position as Division Manager, I worked for AT&T in the Small Business Long Distance Product

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Management organization and was responsible for developing product line strategy and marketing segmentation activities as well as influencing new products in the market.

3. I received my Bachelor of Science degree in Sociology from Ohio State University in 1972 and a Masters Degree from the University of Pennsylvania in 1974.

B. Dean A. Gropper

4. My name is Dean A. Gropper, and my business address is 1 Oak Way, Berkeley Heights, N.J. 07922.

5. I am a Division Manager in the AT&T Network and Computing Services Division. In that position, among other duties, I am responsible for leading the entire Access Management Process with considerable experience leading the Vendor Management Process for Access Suppliers including their compliance with AT&T's price and performance requirements.

6. I received a Bachelor of Science degree from Boston University in 1969 in Information Systems Engineering, a Master of Science degree from Purdue University in 1974 in Computer Science/Industrial Engineering, and a Master's degree in Advanced Management from Pace University in 1983.

7. Prior to assuming my current responsibilities, I have held various positions within AT&T, including working with the AT&T Business and Consumer Business Units to educate them on how RBOC access pricing and performance affect AT&T products. I also have been responsible for the design, implementation, and operation of numerous large scale

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data processing systems in support of the AT&T sales force and other major operations functions.

II. SCOPE OF STATEMENT AND SUMMARY

8. The purpose of this affidavit is to respond to claims made by BellSouth that it will be unable, almost by technical necessity, to discriminate against interexchange carriers (IXCs) and competing local exchange carriers (CLECs), and in favor of its interexchange affiliate. Specifically, William L. Smith asserts that BellSouth could not misuse its current monopoly bottleneck control of the local exchange to favor an affiliate that would provide interLATA service to end users. Mr. Smith claims that it is not technically practical for BellSouth to discriminate against other carriers in the provision of exchange access services or to provide preferential service to itself or its affiliates.¹

9. In this affidavit, we demonstrate that such opportunities for discrimination against IXCs and CLECs do exist, particularly in the provisioning and maintenance of facilities and access services. We describe how the RBOCs, in providing interexchange service that may be authorized by the Commission, could, so long as they retain market power in the provision of local exchange and exchange access services, improperly favor an interexchange affiliate, and continue to discriminate in both the development of new access arrangements and the provisioning and pricing of access facilities. We also explain how the RBOCs would be

¹ Affidavit of William L. Smith On Behalf of BellSouth ¶4 (hereinafter "Smith Affidavit").

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able to cross-subsidize their competitive interexchange activities by shifting costs across the broad array of activities common to both the local exchange and interexchange businesses.

The affidavit then addresses the possibility that, once permitted to offer interexchange service, the RBOCs could misuse billing and customer proprietary network information.

III. RBOC ENTRY INTO LONG DISTANCE SERVICE HEIGHTENS THE RISK OF RBOC MISCONDUCT SO LONG AS IXC'S REMAIN DEPENDENT ON RBOC FACILITIES AND SERVICES

10. Prior to Divestiture, which separated the provision of interexchange and local exchange services, the Bell System had substantial incentives and ability to discriminate against IXC's. In order to address this problem, under the MFJ, the RBOCs were excluded from the interLATA market. So long as the RBOCs do not compete in interexchange markets, the RBOCs lack incentive to discriminate in the provision of access to IXC's. Currently, access discrimination against IXC's has a cost to the RBOCs in terms of reduced revenues -- as a general matter, an RBOC benefits from new access arrangements by gaining increased traffic and revenue. The incentives change markedly, however, if the RBOC has an interexchange affiliate. Once an RBOC has entered the interexchange market, its interexchange affiliate will be in a position to benefit directly from the discrimination against IXC's as it can offer the service instead of the IXC's. Thus, as RBOCs are permitted to provide interexchange services, the types of RBOC discriminatory conduct set forth in this affidavit can be expected to increase substantially.

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11. The RBOCs' incentives to discriminate have also increased substantially as IXC's begin to enter local exchange markets. IXC's seeking to offer local exchange service must interconnect with the RBOC network to provide local service and will be dependent on the RBOC for unbundled network elements (UNEs) or for resale. This dependence on the RBOC for interconnection arrangements offers the RBOC significant new ways to discriminate against IXC's, this time in the provisioning and maintenance of local service and UNEs. In fact, the RBOC's incentive to discriminate against an IXC's local service offering is two-fold: such discrimination undercuts the IXC in its attempt to compete with the RBOC for local exchange service customers, and, to the extent that customers prefer one-stop shopping for local and long distance service, any shortcoming in the IXC's local service resulting from discrimination will adversely affect that IXC's combined service offering and make the RBOC's combined offering more attractive.

12. So long as IXC's remain dependent on RBOC facilities and services, there are countless opportunities for discrimination and anticompetitive conduct by the RBOC in connection with the IXC's entry into local service. In this process, the RBOC is a supplier of service to the IXC, but it is also a competitor, and as a result, has incentives to degrade the IXC's service. Included in this affidavit are examples of discrimination that CLECs have encountered in seeking to offer local exchange competition to RBOCs.

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13. BellSouth cites to the various network systems, many of which are automated, and claims that such systems ensure that opportunities for discrimination could not succeed.² The unbundling requirements of the Act, however, are generally untested, and without considerable experience with these requirements, there can be no claim that the safeguards included as part of the unbundling requirements are sufficient to prevent discrimination. Parties still have little experience with which to judge RBOC performance in the provision of unbundled elements, the quality of service provided to new entrants, the adequacy of the operational interfaces, and the many other details that are associated with unbundling the local exchange monopoly bottleneck. In light of the incentives RBOCs have to discriminate, and the evidence of RBOC discrimination against CLECs that already exists, it is imprudent to conclude that RBOCs will not discriminate against new entrants in the local exchange, or that regulation could be effective in stopping the many and subtle means of discrimination available to the RBOCs.

IV. CONTINUING DEPENDENCE ON RBOC FACILITIES AND SERVICES

14. As the above discussion notes, the ability of an incumbent LEC to engage in discriminatory practices is a function of its market power over the provision of local exchange and access services. It is important to recognize, therefore, the extent to which AT&T's interexchange services are dependent on the local exchange and access facilities of the RBOCs. This dependence is undeniable in light of how AT&T must connect its facilities to RBOC end

² See, e.g., Smith Affidavit ¶42.

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offices, access tandems, and serving wire centers to reach its customers.

15. The only alternatives to current RBOC local exchange and access facilities are offered by competitive access providers ("CAPs") and the new CLECs that are entering into interconnection agreements with incumbent LECs and constructing new, independent networks. CAPs have grown since divestiture to offer dedicated access, dedicated transport, and switched transport services to IXC's seeking alternatives to the LECs, and a number have received authorization to provide local exchange service. Notwithstanding significant growth by CAPs over the past decade, however, and AT&T's substantial attempts to move to alternative access facilities, AT&T still remains largely dependent on incumbent LECs. AT&T purchased more than 99% of its access facilities from incumbent LECs in 1997, and less than 1% of access from CAPs. On a dollar basis, payments to CAPs represent less than 1/2 of 1% of our total access expense. Other potential alternatives to reach AT&T customers, such as cable TV and wireless solutions are currently very limited.

16. In 1997, AT&T connected its Points of Presence (POPs) to the RBOC end offices and tandems using approximately 89% switched access and 11% special access. Aside from some limited CAP deployment, the only way currently to provide service to the vast majority of our customers who require switched access capability is through an incumbent LEC. While AT&T intends to increase its use of access connections from CAPs, we expect incumbent LEC monopoly control of access and local exchange facilities, and the lack of competitive alternatives, to persist for some time, leaving AT&T dependent on the incumbent

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LECs for the majority of its access needs.

17. Although CAPs are increasing their presence, their progress is slow relative to the entire market, and largely limited to major metropolitan markets, with a high concentration of their facilities in central business districts. In addition, CAPs are largely restricted to commercial users and transport services, and there is little prospect of CAPs offering service outside these geographic areas and market segments in the near future.

18. Specifically, CAPs currently, and will for some time, provide only a limited footprint of local access. Although AT&T has a number of agreements with CAPs, which cover some 100-150 cities, this only represents about 9000 buildings, which is a tiny fraction of the over 4 million commercial buildings in the U.S. Moreover, expansion of CAP services will be relatively slow as a result of capital constraints as well as physical constraints. It would take well over \$100 billion to duplicate the RBOC's local exchange facilities.³ Physical constraints include negotiation of rights of way, access to buildings, and negotiation of collocation arrangements with the incumbent LECs.

19. Unlike the RBOCs, for which AT&T generally has no current alternatives, and with which AT&T has a long history of service performance, new suppliers (i.e., the CAP) must first satisfy certain standards to ensure reliability and quality. Before a CAP is certified, AT&T provides an on-site Network Validation Test ("NVT") and an Operations Readiness Assessment ("ORA"). The NVT evaluates the CAPs' network plant and equipment, including

³ Wall St. J., March 20, 1995, p. R4.

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design, maintenance procedures and processes, and the physical installation of the vendor's equipment. It insures that the vendor's network meets necessary requirements for design, survivability, quality, and disaster recovery. The ORA is used to insure that a vendor can meet necessary requirements for ordering, provisioning, maintaining, performance reporting, and billing access services. While these processes can take six months to a year to complete and require significant resources, and thus raise additional barriers to the use of CAP services, they are essential to ensure the quality of alternative access.

20. AT&T and other CLECs, of course, do today offer some alternative local services to business customers, and AT&T anticipates that its local service will grow in the coming years. Nonetheless, notwithstanding the growth of its local service and services available from other CLECs that offer facilities-based competition, AT&T currently remains almost entirely dependent on RBOCs. Until alternative facilities are widely deployed and operating, it is not reasonable to conclude that this will change soon, and certainly not soon enough to discipline possible anticompetitive conduct by the RBOCs..

V. DISCRIMINATION CONCERNING NEW ARRANGEMENTS

21. The telecommunications industry is constantly changing. The needs of its users, and its capabilities and features, evolve rapidly and often in unforeseen directions, driven by market demand and technological evolution. As a result, the competitive interexchange market drives IXC's to innovate constantly. IXC's, however, remain dependent on the incumbent LEC's to provide the new or improved access arrangements needed to support new and better

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interexchange offerings. Over the past several years, for example, AT&T has requested dozens of new service options or capabilities.

22. New capabilities make it possible for AT&T to bring new, better, or cheaper services to our customers. In addition to new network capabilities, AT&T's requests for new service options can be "back office" in nature, enhancing the ability of AT&T and the supplier-LEC to provision, maintain, and restore the access service. Examples of such service options include requests for service segmentation, mechanized provisioning procedures to provide diverse facility arrangements, mechanized exchange of operational data, administration, maintenance, and provisioning information, and self-healing and alternate route capabilities. In addition, AT&T has requested service guarantees addressing pricing and warranting of existing access services, such as service assurance warranties that would provide credit allowances when an access supplier fails to meet service commitments.

23. RBOCs can discriminate against IXC's in responding to requests for new access arrangements. Regardless of the type of new access arrangement, such arrangements are dependent on the incumbent LECs. Because of the lack of meaningful competitive alternatives for local exchange services, the incumbent LECs control the design and deployment of new access arrangements. Indeed, the incumbent LECs dictate when and where such new access arrangements are to be made available. As an initial matter, the LECs must agree to develop a desired offering, and then they must deploy it. This process can be fraught with difficulty if the LEC has some interest inconsistent with that of AT&T.

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24. For instance, it took AT&T over 5 years to obtain RBOC commitments to tariff local exchange ISDN BRI (Integrated Services Digital Network Basic Rate Interface) connections for both business and residential customers on a uniform and widely available basis. This delay severely impacted AT&T's ability to meet customer ISDN needs and our ability to offer end-to-end ISDN service offerings in the marketplace.

25. Specifically, ISDN BRI service is a digital subscriber line between the customer and a LEC central office that provides two communications paths and one signaling channel (2B+D) on a digital local loop. The ability to provide this service holds the promise for business and residential customers of new capabilities in video conferencing, distance learning, telecommuting, Internet access, and multiline services. Significantly, at the same time, the provision of ISDN BRI has the potential to reduce demand for multiple LEC-provided residential or business lines to use with fax machines, modems, and similar CPE and thus could reduce LEC revenues and be unattractive to them.

26. Because AT&T and other IXC's could not provide ISDN 64 Clear Channel connections across LATAs without LEC-provided local exchange (residential or business) ISDN BRI service tariffed for end-user customers as a local exchange service, AT&T repeatedly asked the BOCs to provide this service since 1991. Yet, the RBOCs did not file both business and residential ISDN BRI tariffs until the end of 1996. The filing of these tariffs was a prolonged and disjointed effort with each RBOC, and AT&T had to wait for each RBOC to file the tariff before it could file an interLATA ISDN offering, called AT&T Digital Long

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Distance Service, in that company's territory. AT&T has been completely dependent on the RBOC's tariff availability.

27. An RBOC's incentive to delay or deny access services to IXC's increases considerably with prospects for RBOC entry into interLATA service. For example, an RBOC could delay offering arrangements needed by an IXC for a particular service until the RBOC's own affiliate was able to use those capabilities to offer a rival service. The Georgia Public Service Commission ("PSC") found that BellSouth had done precisely that in order to improperly advantage its affiliate over competing providers. Specifically, the Georgia PSC determined that BellSouth had, among other things, manipulated development of the local network and the timing of unbundling of network features in order to maximize its competitive advantage in offering voice messaging services.⁴

28. Another way an RBOC could abuse its bottleneck would be to make available access offerings that an affiliate can utilize before releasing variants of the offering that interexchange competitors might need. Bell Atlantic's introduction of ISDN BRI for business customers illustrates this problem. Bell Atlantic made ISDN BRI capabilities generally available to its own Centrex end users (business BRI) substantially sooner (15 months) than it made comparable ISDN PRI (Primary Rate Interface) capabilities generally available to users

⁴ In the Matter of the Commission's Investigation Into Southern Bell Telephone and Telegraph Company's Provision of MemoryCallsm Service, Order of the Georgia Public Service Commission, Docket No. 4000-U, decided May 21, 1991, p. 2.

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of PBX systems which offer a competitive alternative to Centrex.⁵ In this way, control of the local exchange bottleneck can be used to give an RBOC's affiliated operations unjustifiable advantages.

29. An RBOC could also simply refuse to develop new access arrangements. An example of such RBOC conduct involves 555-XXXX services. This exchange has traditionally been associated with directory assistance, but was authorized by the Commission in 1994 for use in providing different types of public information services. AT&T was interested in providing such service and sent requests to various RBOCs in early 1996 seeking a "service ready" date and proposed architecture to deliver calls via a 555-XXXX dialing pattern to the AT&T network. Although the necessary industry forums had already approved the technical specifications for the service, and over 1500 555-XXXX lines had been assigned by the North American Numbering Plan Administrator, the RBOCs indicated that they would have to evaluate the business opportunity before making any commitment whether to provide this service. Some of the RBOCs stated that they would not provide this service, and others indicated that they were willing to consider only a limited market trial. As a result, AT&T was unable to offer, its customers unable to take advantage, of a new service.

⁵ Compare The Chesapeake and Potomac Telephone Co. of Maryland, General Services Tariff, P.S.C. - Md. - No. 203, filed eff. date February 5, 1992, Sec. 13N (Centrex Intelliling BRI), with id., filed eff. date May 12, 1993, Sec. 14 (Intelliling PRI [for PBXs]); New Jersey Bell Telephone Co., Tariff B.P.U. - N.J. - No. 2. Exchange and Network Services, filed eff. date July 29, 1992, Sec. 9.1.4.I (Centrex Intelliling BRI), with id., filed eff. date May 3, 1993, Sec. 5.3.6.G (Intelliling PRI [for PBXs]).

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30. To compound these inequities, an RBOC could also use requests for new access arrangements as a source of market information that could be used to give a competitive advantage to its interexchange affiliates. Typically, to obtain new access arrangements, IXCs must give the RBOCs significant information concerning new interexchange service offerings, specific customer demographics, demand estimates, and network needs. This information is competitively sensitive and is the kind of information that, in a regular commercial setting, would never be disclosed to competitors. Disclosure of this information to interexchange competitors would severely harm the carrier seeking new arrangements. This information could easily be shared with, and for the benefit of, interexchange affiliates, particularly if the same RBOC employees are engaged in the design, development, and engineering of access and interexchange facilities and offerings. Moreover, knowledge of a new access offering could be imparted to the affiliate in advance and its release timed so as to allow the affiliate to move to take advantage of the offering while other carriers studied it for possible use.

31. The RBOCs also have the ability to discriminate against CLECs in the development of new local services and capabilities. Clearly, the types of discrimination described above in the context of access arrangements would apply equally in the local service context, and the RBOC has significant control over the introduction of new services. Generally, to the extent that new facilities are required, the RBOC would be in a position to delay or block entirely any new service sought by a CLEC. Even where the RBOC adds facilities, it would still have enormous leeway in determining what services will be offered.

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To the extent that a new service may involve software changes or AIN, then the RBOC would be in a position to use the certification and testing process to delay or hinder the offering of a new service. As noted above, a ready form of discrimination would be to delay the introduction of a CLEC's new service until the RBOC has developed a rival product or implemented some price incentive or service option that makes the CLEC's new service less competitive. In the case of a new service, there also will be no operating experience with that service that would permit a CLEC (or regulators) to determine whether the RBOC has acted in an appropriate manner.

32. To the extent that the new service involves the provisioning or conditioning of UNEs, an RBOC could establish the connections on older plant that will provide inferior quality service. For example, an IXC/CLEC that requires properly conditioned loops to permit the provision of higher quality data services might find the RBOC has chosen to condition inferior loop plant, resulting in higher conditioning costs to the IXC/CLEC, inferior service, or both. In any case of failure or outage of a new service offered by a CLEC, moreover, it would be the CLEC, and not the RBOC, that would in all likelihood receive the blame from customers and the unfavorable publicity.

33. These concerns are, unfortunately, not merely hypothetical. Other affidavits submitted herewith by AT&T describe in detail BellSouth's consistent defiance of the requirements of the Telecommunications Act of 1996 and of Commission decisions, significantly impairing and delaying AT&T's efforts to enter local exchange markets currently monopolized by

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BellSouth. Other competitors have faced similar hurdles in attempting to enter local markets in the BellSouth region. For example, under its interconnection agreement with BellSouth, in January 1998, AT&T's local service unit -- then the independent TCG -- requested that BellSouth provide it with frame relay interconnection service for the mutual exchange of frame relay traffic between BellSouth's and TCG's respective networks. Despite repeated requests from TCG, BellSouth refused to provide frame relay interconnection services, compelling TCG to file an administrative complaint.⁶ TCG also was compelled to file a complaint when BellSouth refused to provide physical collocation of TCG's switching equipment on terms consistent with the Georgia Public Service Commission's cost study order.⁷ Similarly, MCI, citing a "pattern of obstruction and delay," has filed a complaint against BellSouth for failures to provide nondiscriminatory access to BellSouth's OSS and data bases, to provide interconnection that is at least equal to what BellSouth provides itself, and to provide resale services and unbundled network elements on a nondiscriminatory basis.⁸

VI. DISCRIMINATION IN PROVISIONING

⁶ Complaint of Teleport Communications Group Inc. Against BellSouth Telecommunications, Inc. and Request for Immediate Relief, Georgia Public Service Comm'n Docket No. 6903-U (filed June 3, 1998).

⁷ Formal Complaint No. 2 of Teleport Communications Group Inc. Against BellSouth Telecommunications, inc. and Request for Immediate Relief, Georgia Public Service Comm'n Docket No. 6903-U (filed June 12, 1998).

⁸ Complaint of MCImetro Access Transmission Services, Inc. Against BellSouth Telecommunications, Inc. for Breach of Approved Interconnection Agreement, Florida Public Service Comm'n Docket No. 0281-98 (filed February 23, 1998).

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34. Contrary to the claims of BellSouth,⁹ there are many opportunities for abuse in connection with the provisioning and maintenance of existing access services, whether special or switched. It is not necessary for the RBOC to degrade connections or engage in discrimination that would be obvious to even a casual observer. Certainly, those obvious means exist. However, there are also many opportunities for an RBOC to discriminate against IXC's and CLECs, and in favor an affiliated long distance entity, in subtle ways in both the provisioning and maintenance of facilities.

35. The provisioning and maintenance processes for long distance connections may be manipulated by an RBOC with an incentive to do so. In the case of special access, the provisioning process begins with the IXC issuing an Access Service Request or "ASR" to an RBOC, which responds with a Firm Order Confirmation Date giving a due date by which the requested facility or circuit should be provided. This information allows the IXC to calculate when service can be established. Subsequently, the RBOC provides a circuit Design Layout Record, where required, that assigns facilities to the requested service and commits to a service date.

36. The RBOC controls this process and the timing and handling of any request. As a practical matter, provisioning dates are negotiated by each IXC with the RBOC that will provide the desired access, and there is little remedy available to an IXC if an RBOC fails to process a request for access service within a particular time or to offer the access service by a

⁹ See Smith Affidavit ¶ 32.

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negotiated provisioning date. As one example, US WEST refused to install entrance facilities requested by AT&T, and US WEST engineers would not provide AT&T with a Firm Order Confirmation (FOC) Date, unless AT&T ordered three-to-five year terms for the facilities.

US WEST finally agreed to install the facilities on the terms sought by AT&T, but only after weeks of negotiation between US WEST and AT&T, the expenditure of considerable time and effort, and disruption to AT&T's customer. This example demonstrates the ability of an RBOC to disadvantage competing IXC's simply by procrastinating in providing the Firm Order Confirmation Date, the Design Layout Record, and other data needed by the IXC, and offering seemingly non-discriminatory excuses for the delay.

37. Access capacity limitations, reductions in workforce availability, capital limitations, and other local problems are often cited by RBOCs as the reason why prompt access provisioning is not possible in a particular instance. In such situations, there is little that an IXC can do, but such action can result in substantial competitive injury -- as can occur if the RBOC or its interexchange affiliate tells the customer that it can provide service more quickly than can AT&T, without mentioning that the RBOC's access capacity limitations are the reason that AT&T cannot provide its service more quickly. In a competitive environment where RBOCs are competing directly with IXC's, the incentive to engage in such actions grows dramatically.

38. These opportunities also exist in the provision of local exchange facilities. For

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instance, BellSouth maintains that its loop assignment system is highly automated,¹⁰ but fails to discuss how bulk (i.e. multi-circuit) assignment orders of interoffice facilities, and any exception orders, are typically handled. These orders typically are handled manually, or, if fully automated, provide the opportunity for manual override. Thus, circuits for CLECs can be assigned to older copper transmission facilities, for example, instead of optical fiber transmission facilities. Discriminatory treatment of CLECs in this regard may be a result of explicit verbal internal RBOC directives, or simply a result of individual employee actions. Either way, this behavior would be very difficult to detect.

39. Similarly, the RBOCs have significant opportunities to discriminate against CLECs in the provision of local exchange service. For example, the provision of unbundled loops offers the RBOCs a number of opportunities for discrimination against CLECs:

- a) slower provisioning intervals, faulty installations, and disconnections during service cutover;
- b) providing poor repair service and lengthy intervals;
- c) providing low-quality copper feeder lines;
- d) misaligning loops so that the CLEC's customers have poor sound quality on their lines; and
- e) failing to provide preventative maintenance.

The RBOC would be likely to have ready explanations for most of this conduct. In particular,

¹⁰ See Smith Affidavit ¶ 42.